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No. 82-2024

In The

Supreme Court of the United States

October Term, 1982

JOHN EARLY and STEPHEN EARLY,

Petitioners,

v.

EASTERN TRANSFER, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN AND PACKERS, TEAMSTERS LOCAL 82, BART GRIFFITHS AND GEORGE HARRIS,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITIONERS' REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioners wish to address one argument made by respondents in their briefs filed in opposition to the petition. Both the Teamsters Union and Eastern Transfer allege that petitioners are asking the Court to rewrite their contract by imposing a "duty of partiality" on union members of joint committees to deadlock grievances. Teamster Br. at 10-11; Eastern Br. at 7-8. To create alarm, the company claims that this result "would serve as a death knell to the joint committee system." Eastern Br. at 8. However, respondents' claims

are little more than a "straw horse" because, quite simply, they are *not* what petitioners advocate.[1]

All petitioners ask is that this Court rule that its holding in *Vaca v. Sipes*, 386 U.S. 171 (1967), includes those Teamsters officials who in reality determine whether an employee's grievance will be submitted to impartial arbitration. These officials happen to be the ones who sit on the bipartite committees, not the ones who appear with the grievant and help present his claim to the committee.

Contrary to respondents' claims, were the duty of fair representation to attach to the conduct of union committeemen, it would not oblige them to advocate, nor to vote to sustain and thus to submit to arbitration, every employee's grievance. As the Court made clear in *Vaca*, the duty of fair representation contemplates that unions will have discretion whether to invoke arbitration and whether to settle or even abandon frivolous grievances short of that most costly and time-consuming step in the grievance procedure. 386 U.S. at 191-92. The Court reasoned that if the rule were otherwise, and individual employees were able to compel arbitration, the grievance process would be seriously overburdened. Accordingly, it held that "a union does not breach its duty of fair representation . . . merely because it settled the grievance short of arbitration." *Id.* at 192.

The Teamsters Union points out that joint committee decisions are already subject to being set aside on the traditional grounds for vacating arbitral awards, *i.e.*, where the arbitrator exceeded the scope of his authority, or where there was evident partiality, fraud, or collusion. Teamster Br. at 12. While this is true, the Court recognized in *Vaca* that the availability

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[1] Both respondents also assert that in a long line of decisions this court has accorded the same respect to joint committee awards, as to impartial arbitral decisions. Teamster Br. at 5; Eastern Br. at 6. However, as petitioners explained in their petition (p. 13, n.9), the issue presented here concerning the duty owed by union committee members to individual workers has never before been considered by the Court.

of these grounds was not sufficient "to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law." 386 U.S. at 182. Accordingly, the Court gave individual workers an additional ground for having arbitral awards vacated, namely whenever they could demonstrate that their union breached its duty of fair representation when processing, or refusing to process, their grievances. Thus, whenever an employee can demonstrate that his union acted arbitrarily, discriminatorily or in bad faith, when handling his grievance, he is entitled to a judicial hearing on his breach of contract claim under section 301 of the Labor Management Relations Act. 29 U.S.C. § 185. It is this additional ground that has been effectively withheld from Teamster members by virtue of the unique structure and operation of the joint grievance committee.

If the Court were to rule that the duty of fair representation applies to the Teamster officials sitting as members of joint grievance committees, it would not impose upon those officials a duty any different from the duty imposed upon officials of other unions. Like the Steelworker offical empowered to decide whether to settle grievances or to invoke arbitration, Teamster committee members would have similar discretion provided they exercised it in a manner consistent with the duty of fair representation. Naturally, it is implicit in the union's representative role that it will act as a workplace advocate for its members. But that does not require it to blindly advocate every grievant's position, or to deadlock every grievance before a joint committee and thus to invoke impartial arbitration. Accordinly, there is no basis for respondents' contention that by holding union members of a joint committee to a duty of fair representation the effect would be to modify the grievance procedure in their agreement by causing committees invariably to deadlock.

In *Vaca*, the Court observed that Congress had not intended "to shield employers from the natural consequences of their

breaches of bargaining agreements by wrongful union conduct in the enforcement of such agreements." 386 U.S. at 186. Given the current judicial practice of declining to review the conduct of those Teamster officials who exercise discretion over the enforcement process as members of joint committees, both Teamster employers and the Union are, however, effectively shielded from the consequences of their wrongful conduct when they improperly deny grievances. Petitioners seek only to bring themselves and other Teamster members within the same *Vaca* "bulwark" that protects employees represented by other unions.

Respectfully submitted,

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